

The Board of Trustees  
of the  
School and Institutional Trust Lands Administration

☒ New Policy    ☐ Amends Policy No.    ☐ Repeals Policy No.

Policy Statement No. 97-01  
Cause No. 1

Subject: Grand Staircase-  
Escalante National  
Monument

The Board of Trustees of the School and Institutional Trust Lands Administration met in open, public session on January 16, 1997 and by majority vote declares the following to be an official policy of the Board:

WHEREAS, the State of Utah, through this Board and the School and Institutional Trust Lands Administration, is the owner of 3.7 million acres of land, plus an additional million acres of mineral estate in the state; and

WHEREAS, this land was given to the state as part of a bilateral compact with the United States of America (Enabling Act and Article X, Utah Constitution); and

WHEREAS, this land grant was “in the nature of a contract, with bargained for consideration exchanged between both governments” (*Utah v. Andrus*, 486 F. Supp. 995, 1979); and

WHEREAS, the land is to be managed for the exclusive benefit of the “common schools” (Utah Enabling Act); and

WHEREAS, this contract has been interpreted by the United States Supreme Court as imposing a trust obligation on the state, including attendant fiduciary duties and the duty of undivided loyalty to the trust beneficiaries (*Lassen v. Arizona*, 385 U.S. 458); and

WHEREAS, the Utah State Legislature passed and Utah’s Governor signed legislation in 1994 reaffirming the purpose of the trust, reaffirming the use of standard trust principles, and providing that the beneficiaries of the trust do not include “other governmental institutions or

agencies, the public at large, or the general welfare of the state,” (Section 53C-1-102, Utah Code); and

WHEREAS, the 1994 legislation further provided that “the trustee must be concerned with both income for the current beneficiaries and the preservation of trust assets for future beneficiaries,” thereby requiring a “balancing of short and long term interests;” and

WHEREAS, the Trust Lands Administration owns four sections out of each 36 section township in southern Utah, including those portions of Kane and Garfield Counties within the drainage of the Escalante and Paria Rivers and the Kaiparowits Plateau; and

WHEREAS, these four sections are scattered throughout each township, with the other sections owned by the federal government, principally the Bureau of Land Management and the National Park Service; and

WHEREAS, the sections given to the state were scattered in this manner so that the state could share in whatever bounty was found in the then unknown vastness of southern Utah; and

WHEREAS, the federal government is obligated, as part of the bilateral compact, to provide reasonable access to each and every one of the school trust sections, if necessary, in order to fulfill the purposes of the trust (*Utah v. Andrus*, 486 F. Supp. 995, 1979); and

WHEREAS, since Utah became a state, the natural resources of this region of Kane and Garfield Counties have been explored, and many useful commodities were discovered, including coal, coalbed methane, carbon dioxide, uranium, titanium, and the potential for oil and gas; and

WHEREAS, for example, the United State Geological Survey has estimated that there are approximately 62 billion tons of high btu, low sulphur coal underlying the Kaiparowits Plateau; and

WHEREAS, the Utah Geological Survey has estimated that 9.3 billion tons of this coal are recoverable and that the school trust lands within the area hold 800 million tons of that recoverable coal; and

WHEREAS, for example, the vast majority of the coal, recoverable or not, can easily yield the recovery of 2-4 trillion cubic feet of coalbed methane; and

WHEREAS, coalbed methane is a clean burning natural gas, and could be burned in place without any effect upon air quality in the area; and

WHEREAS, state and local governments can sell electricity direct to consumers, pursuant to section 212 of the Federal Power Act (16 U.S.C. 824k); and

WHEREAS, this area also has the potential for significant deposits of recoverable oil and gas; and

WHEREAS, the Trust Lands Administration has leased the school trust lands to various companies for the recovery of those commodities; and

WHEREAS, this Board and the Trust Lands Administration have the expectation that leasing will lead to reasonably operated exploration and recovery, if the information obtained so warrants; and

WHEREAS, this Board and the Trust Lands Administration are fully aware that the process from leasing to production is a process of many decisional stages and exit points, and that information must be obtained in one stage before a decision can be made to proceed to the next stage; and

WHEREAS, this Board and the Trust Lands Administration are fully aware that there are costs associated with the recovery of mineral commodities, and that excessive costs will make a mineral deposit uneconomical to develop; and

WHEREAS, this Board and the Trust Lands Administration know that simply pointing out the costs of development does not, in and of itself, answer the questions of the economics of any particular deposit in the negative, as many seem to fervently believe; and

WHEREAS, on September 18, 1996, the President of the United States, William J. Clinton, pursuant to the Authority of the Antiquities Act of 1906, signed a proclamation which incorporated approximately 1.7 million acres of federal land, primarily covering the drainages of the Paria and Escalante Rivers and the Kaiparowits Plateau, into the Grand Staircase - Escalante National Monument; and

WHEREAS, the proclamation signed by the President specifies that the establishment of the monument is subject to valid existing rights, and that the monument would be managed by the Bureau of Land Management; and

WHEREAS, the Federal Land Policy and Management Act (FLPMA) is the Organic Act for the Bureau of Land Management, and requires that the Bureau manage its lands under a multiple-use regime; and

WHEREAS, one of the valid existing rights is that created by the bilateral compact between the United States of America and the State of Utah concerning the school trust lands; and

WHEREAS, the immediate effect of the designation is the creation of about 176,600 surface acres and 200,700 mineral acres of school trust land within a federal reservation keyed to

preservation, called “inholdings;” and

WHEREAS, this Board and the Trust Lands Administration are very concerned that this monument is larger than that necessary for the proper care and management of the objects to be protected by the monument, contrary to the requirements of the Antiquities Act, thereby including an excessive amount of school trust lands, and including trust land resources that should not be within the monument; and

WHEREAS, similar inholdings were created in the creation of national parks, forests and Indian reservations, amounting to about 200,000 acres of trust lands; and

WHEREAS, the designation of a preserve for the federally mandated public purpose of the preservation of the desert tortoise has included about 10,000 acres of prime developable land near St. George, Utah; and

WHEREAS, both the Trust Lands Administration and the federal government are desirous of, and have been working toward, exchanges of the trust lands within these preservation areas for federal lands or other assets elsewhere in Utah; and

WHEREAS, no exchanges of land have been consummated with the federal government for over a decade; and

WHEREAS, from the Trust perspective, to have potential for success, an exchange process must provide for answers to the following questions: (1) what is the value of the lands to be exchanged and what standards are to be used to determine value; (2) what federal assets are available for the exchange; and (3) how does the Trust Lands Administration keep the federal government at the negotiation table; and

WHEREAS, a bipartisan effort was undertaken to find a way to exchange the inholdings in the parks, forests and Indian reservations; and

WHEREAS, this effort culminated in a Congressionally authorized exchange process (P.L. 103-93), signed by President Clinton in 1993; and

WHEREAS, the President recognized this legislation in his remarks at the time he established the Grand Staircase - Escalante National Monument, stating in addition that he would “use his office to accelerate the exchange process;” and

WHEREAS, the core of that legislation was an evaluation of value based on appraisals; and

WHEREAS, the Governor, this Board and the federal government have been diligently working on implementing the law since passage, however, the sheer magnitude of the task of

appraisal, with attendant up-front costs paid from the coffers of the schoolchildren of Utah, has prevented any actual exchanges from yet occurring; and

WHEREAS, appraisals have the deceptive appearance of an objective determination of value; and

WHEREAS, this Board recognizes the weaknesses in appraisals, including specifically that they often ignore the “fourth rule” of appraisal methodology, that being to simply sit yourself down across the street from the property and ask yourself would you buy (or sell) the property for the stated amount, and that appraisals do not reflect the opportunity to explore and consequently develop the resources that are discovered, and that appraisals are tied to only one point in time; and

WHEREAS, this Board and the Trust Lands Administration are generally aware that federal appraisal assumptions favor maximum or minimum recovery, depending upon whether the federal government is buying or selling property; and

WHEREAS, other determinations of value, for example, a simple resource for resource exchange, or some variant, would be easier and quicker to accomplish, and be fair to the terms of the bilateral compact between the state and the federal government; and

WHEREAS, the President’s announcement has had the effect of interrupting a great many of the efforts to recover these commodities at various points in the decision making process; and

WHEREAS, information is necessary to a determination of value, whether pursuant to appraisals or any other valuation methodology; and

WHEREAS, all of the mineral lessees of the Trust Lands Administration are now faced with the decision of whether to proceed with their plans, or to seek some other type of compensation from the federal government, including, for example, exchanges or buyout; and

WHEREAS, for example, in his remarks, the President mentioned that PacifiCorp had agreed to exchange its leases to mine coal in the new monument for “more appropriate sites outside the monument area;” and

WHEREAS, the public agreement between PacifiCorp and the Department of Interior discusses an exchange of the value of the leasehold for bidding rights (cash equivalent) for other coal leases that may be offered elsewhere in the United States, without interest; and

WHEREAS, we are generally informed that PacifiCorp and the Interior Department are now engaged in negotiations concerning the value of the leasehold, which would necessarily require information on extraction and transportation costs; and

WHEREAS, this type of information is valuable to the trust in making estimations of the value of its resources; and

WHEREAS, at the time of the establishment of the monument, a major environmentally responsible oil exploration company was preparing to conduct geophysical studies of the oil potential in portions of the monument; and

WHEREAS, at the time of the establishment of the monument, vandals destroyed some of the markers describing the path of this exploration; and

WHEREAS, this type of information is very valuable to the trust in determinations of the value of its resources; and

WHEREAS, the President, in his remarks establishing the monument, stated that “reasonable differences in valuation” of the school trust lands should be resolved in favor of the school trust; and

WHEREAS, a major difficulty in valuation under the process set out in P.L. 103-93 is the lack of information about mineral resources, which is directly tied to restrictive federal management; and

WHEREAS, this Board is extremely concerned that some of the mineral lessees are being pressured to quit their operations in the monument without completing the information gathering activities necessary for an informed decision about the mineral resources, to the immediate detriment of the trust; and

WHEREAS, this Board and the Trust Lands Administration have approached senior officials of the Interior Department to discuss general concepts of valuation and process for exchange or other uses of the school trust lands within the new national monument; and

WHEREAS, this Board and the Trust Lands Administration have been told, in all sincerity, that the federal government would do everything it could to give fair valuation to the trust lands in a speedy manner, and keep the President’s promise; and

WHEREAS, these senior officials have also made it clear that they are required by law to use the long, drawn out and expensive process keyed to appraisals; and

WHEREAS, another massive appraisal process, on top of the difficult one already underway, places a more severe burden of up-front costs on the schoolchildren of Utah; and

WHEREAS, in recent discussions in the United States Congress concerning wilderness designation in Utah, the Interior Department unilaterally created the impression of a vast

disparity in value determinations for the school trust lands involved by looking only at current revenue, which, because the lands have been in wilderness study areas since the early 80's, is necessarily low; and

WHEREAS, in the recent discussions with the senior Interior Department officials, similar attitudes toward income as the sole determinant of value were again displayed; and

WHEREAS, it is obvious to anyone that income production is not the only determinant of value; for example, a person's primary house of residence has value, even though it produces no income; and

WHEREAS, this Board is greatly concerned that the Interior Department will use the same methodology in the valuation of the trust lands in the new monument, especially should it drive the mineral lessees out of the monument; and

WHEREAS, for example, other federal coal deposits in Utah have been mentioned as possible targets for an exchange of the coal owned by the trust in the new monument; and

WHEREAS, one of those tracts is already promised to the trust under P.L. 103-93, others have not proven attractive to lessees, and other tracts (this Board is generally informed by employees of the Utah Geological Survey) may have mineralogical characteristics making them unsuitable for leasing; and

WHEREAS, in addition, many of these tracts are under lands controlled by the United States Forest Service, and interagency differences of opinion have stalled exchange discussion in the past; and

WHEREAS, for all federal minerals, the State of Utah is already entitled to one-half of the revenue from leasing and production, therefore this half of the revenue is not available to compensate the trust for assets in the monument; and

WHEREAS, portions of the monument contains areas of very spectacular scenery, while other portions are common and typical of many other areas in the West; and

WHEREAS, tourism is a high growth potential industry, especially in southern Utah, thereby providing opportunity for income from the trust lands within and adjacent to the monument; and

WHEREAS, in his remarks, the President directed the Secretary of the Interior to start a three-year planning process for the management directives for the monument; and

WHEREAS, the Trust Lands Administration has a staff of about 50 employees; and

WHEREAS, participation in the preparation of this plan will require the time and effort of many of the employees of the Trust Lands Administration, time that could be more profitably spent elsewhere; and

WHEREAS, this management plan, if properly written, may provide many opportunities for the United States of America to live up to its part of the bilateral compact concerning the trust lands, through multiple-use surface or mineral activities, or both; and

WHEREAS, this Board is fully cognizant that the budgeting process of major mineral development companies will not allow for a three year hiatus in individual projects; and

WHEREAS, the director of the Bureau of Land Management in Utah has stated that anything that could be done on school trust lands on the day before the monument was established can be done on the day after establishment; and

WHEREAS, this planning process should not be interpreted as a moratorium on all activities in the monument, because planning is an adaptive process.

NOW THEREFORE, in consideration of the above, the Board adopts the following policy statement and management directives concerning the Grand Staircase - Escalante National Monument.

The Board appeals to the mineral lessees owning leases on trust lands within the monument to not abandon the schoolchildren of Utah, but instead to assist this Board and the Trust Lands Administration in the gathering of whatever information is necessary to guarantee a fair business decision can be made concerning the mineral resources in the monument.

The Board requests that the Governor of Utah and Utah's Congressional delegation assist with agreements or federal legislation that will guarantee fair valuation or full development of the surface or mineral resources on trust lands in the monument.

The Board directs that the Trust Lands Administration examine all options to protect the interests of the schoolchildren, including:

1. Trust Lands Administration shall examine all causes of action concerning litigation against the United States designed to rectify the apparent breach of the bilateral contract with the state caused by the creation of the Grand Staircase - Escalante National Monument.
2. The litigation actions to be examined should include, among others; (a) a challenge that the size of the monument is not the smallest size necessary to protect the objects of interest, as required by the Antiquities Act; (b) an examination of the process by which



the President and the Office of the President made that determination; and (c) options for compensation under the takings provision of the 5<sup>th</sup> Amendment to the United States Constitution.

3. Trust Lands Administration shall work with Governor Leavitt, the Utah State Legislature and Utah's Congressional delegation to obtain legislation that will (a) guarantee that the trust can exercise its rights and obligations on its lands within the monument, (b) guarantee multiple-use management within the monument, (c) seek fair and equitable compensation for the lost opportunity to exercise its rights and obligations and allows all reasonable evidence to be used to determine value, (d) provide appropriations to assist the trust with work on the planning process, valuation work or anything else relevant to the trust within the monument, or all of the above.
4. Trust Lands Administration shall continue to work with the Clinton Administration and Congress to resolve issues related to a possible exchange of assets within the monument for other federal assets elsewhere.
5. Trust Lands Administration shall work with the mineral lessees to guarantee that all necessary information is gathered so that proper business decisions can be made concerning development or exchange of commodity resources found on trust lands in the monument, including activities necessary to gain such information from the ground.
6. Trust Lands Administration shall work with the Bureau of Land Management during the three-year planning process to protect and advance the interests of the trust in the monument.
7. Trust Lands Administration shall study the feasibility of selling, leasing or developing the trust lands within the monument to or with private parties.
8. Trust Lands Administration shall study the option of retaining assets within the monument to meet the future critical mineral needs of the United States.
9. Trust Lands Administration shall work with members of this Board, and will request the assistance of the Governor, to accomplish these purposes.
10. Trust Lands Administration shall seek the assistance of the beneficiaries in all this work.